IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 127 OF 2007

SMT. MEBUBAI A. SAYED, (PRESENTLY IN CENTRAL JAIL AGUADA, THROUGH HER BROTHER MR. AYUB SAYED ... Applicant

Versus

SHRI PISSOLO NAIK GOANKAR AND ANR., ... Respondents

Mr. P. A. Kamat, Advocate for the Applicant.
Ms. Winnie Coutinho, Public Prosecutor for the State.
Respondent No.1 present in person.

Coram:- N. A. BRITTO, J.

Date:- 7th June, 2007

ORAL ORDER

Heard Mr. P. A. Kamat, the learned Counsel on behalf of the applicant/accused. Respondent No.1/Complainant is present in person.

The applicant/accused was convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881 by the learned J.M.F.C., Canacona. The applicant/accused preferred an appeal against the said conviction/sentence before the Court of Sessions. The appeal came up for hearing before the learned Assistant Sessions Judge, Margao on 28-11-2006 but since the applicant/accused nor his Advocate were present, the learned Assistant Sessions Judge proceeded to dismiss the appeal for default. It is well settled that a criminal appeal cannot be dismissed for default and it is expected of the appellate Court, in the absence of the applicant and his lawyer to dispose of the appeal on merits and after perusal and scrutiny of the record. Admittedly, the learned Assistant Sessions Judge did not dispose of the appeal after perusing the record and therefore the order dismissing the appeal deserves to be set

aside.

The Apex Court in Bani Singh v. State of U.P.(AIR 1996 SC 2439) has observed that the law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. If the Court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the Judgment of the trial Court. The Apex Court has also held that the Code envisages disposal of the Appeal on merits and after perusal and scrutiny of the record.

In view of the above, the petition deserves to succeed. The impugned Order dated 28-11-2006 of the learned Assistant Sessions Judge is hereby set aside and the learned Assistant Sessions Judge is hereby directed to dispose of the appeal on its merits after hearing the parties.

The parties are hereby directed to remain present before the Court of the Assistant Sessions Judge, Margao on 21st instant at 10.00 a.m. The matter of deposit of Rs.10,000/- as directed by this Court vide Order dated 23-5-2007 shall now be dealt with by the learned Assistant Sessions Judge after hearing the parties.

N. A. BRITTO, J.

RD.